

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Application by Verizon New England)	
Inc., Bell Atlantic Communications,)	
Inc. (d/b/a Verizon Long Distance),)	CC Docket No. 02- 61
NYNEX Long Distance Company)	
(d/b/a Verizon Enterprise Solutions),)	
Verizon Global Networks Inc., and)	
Verizon Select Services Inc., for)	
Authorization To Provide In-Region,)	
InterLATA Services in Maine)	
)	

REPLY COMMENTS OF AT&T CORP.

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May 3, 2001

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<i>Vermont 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region, InterLATA Services in Vermont</i> , CC Docket No. 02-7 (rel. April 17, 2002)
<i>Connecticut 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon New York, Inc. et al., for Authorization to Provide In-Region InterLATA Services in Connecticut</i> , CC Dkt. No. 01-100 (rel. July 20, 2001)
<i>KS/OK 271 Order</i>	Memorandum Opinion and Order, <i>Joint Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Kansas and Oklahoma</i> , 16 FCC Rcd. 6237 (2001)
<i>Pennsylvania 271 Order</i>	Memorandum Opinion and Order, <i>Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania</i> , CC Docket No. 01-138 (rel. Sept. 19, 2001)

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REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these reply comments in opposition to Verizon's application for authorization to provide in-region, interLATA services in Maine.

INTRODUCTION AND SUMMARY

The Maine Public Utilities Commission ("PUC")¹, the United States Department of Justice ("DOJ"),² and the other commenters in this proceeding all acknowledge that there is no meaningful competition in Maine's local exchange market. Such a conclusion is undeniable:

¹ See Report of the Maine Public Utilities Commission on Verizon Maine's Compliance with Section 271 of the Telecommunications Act of 1996 (April 10, 2002) ("Maine PUC").

² Evaluation of the United States Department of Justice (April 25, 2002) ("DOJ Eval.").

only 257 residential customers (and fewer than 9000 business lines) are served by facilities based competitors. The reason that no competition exists is also clear: Verizon's excessive UNE rates.

Although the Maine PUC lowered Verizon's UNE rates in February, competition does not exist and will not develop because, as demonstrated in AT&T's initial comments, Verizon's rates remain far too high. In particular, the Maine PUC's use of the default 30 percent fixed/70 percent usage sensitive ratio is clear error that is inconsistent with TELRIC cost causation principles and causes inflated minute-of-use charges that impermissibly increase CLEC costs and allow Verizon to over-recover its costs. With respect to the daily usage feed ("DUF") issue, it is now clear that Verizon's "zero" DUF rate is only temporary. Verizon will seek to impose a non-TRILIC compliant Maine DUF rate after the conclusion of this proceeding, and this non-TRILIC compliant DUF rate requires rejection of this application. Until the switching and DUF rate issues are addressed, there should be no finding that Verizon satisfies the requirements of Section 271 or the public interest standard.

I. Maine's Local Exchange Markets Are Not Open To Competition.

The parties submitting comments in this proceeding agree that Maine's local exchange markets are not currently subject to competition. The Maine PUC in its comments acknowledged that "parties have pointed out that competition in Maine is negligible" and declined to make the finding that Verizon satisfied Track A of Section 271. Maine PUC at 86-87. The DOJ Evaluation acknowledges that "less than 1 percent" of all residential lines in Maine are served by CLECs. DOJ Eval. at 5.

In fact, even this assessment is too kind. Using Verizon's numbers as set forth in the DOJ Evaluation, the CLEC residential share in Maine is *significantly* less than one percent –

the 257 residential lines served by facilities based CLECs is 0.05 percent of Verizon's 505,500 residential lines, and the total of 2760 residential customers served by facilities based competitors and resale is only 0.54 percent of all residential lines.³ Moreover, as the DOJ acknowledges, "CLECs have yet to serve any residential lines in Maine by means of the UNE-platform." DOJ Eval. at 5. The Maine PUC notes that the Commission has never defined what level of competition is *de minimis*, Maine PUC at 85, but clearly these levels of competition qualify as such.

The DOJ Evaluation also explains why residential competition has not developed in Maine:

"The low levels of CLEC penetration of residential markets in Maine, and, in particular, the lack of entry by means of CLECs' own facilities and by means of the UNE-platform, may reflect the higher UNE pricing that was in effect for most of the period preceding this application" DOJ Eval. at 6.

The DOJ notes that the Maine PUC has established new lower UNE rates, *id.* at 6-7, but there is no evidence that competition will develop with these newer rates. The new rates still fail to open the market irretrievably to competition because they allow Verizon to increase CLEC costs in ways that make local exchange service uneconomic. AT&T at 7-17.

II. Verizon Has Not Demonstrated That It Has A Legal Obligation To Provide Each UNE To CLECs.

Pursuant to established standards under Section 271, Verizon must show that it has a specific legal obligation to provide each and every UNE (and combinations thereof) to competitors on a nondiscriminatory basis. *See* 47 U.S.C. § 271(c)(2)(B)(i), (ii); *Local*

³ *Accord*, Comments of Sprint Communications Co. L.P. at 11 (April 10, 2002) (deriving similarly small percentages).

Competition Order, ¶ 296.⁴ As demonstrated by AT&T in its initial comments, Verizon cannot make such a showing because Verizon has no applicable wholesale tariff approved by the Maine Commission and no Statement of Generally Accepted Terms (“SGAT”) in which Verizon binds itself to make available to all parties UNEs and combinations thereof. AT&T at 4-6.

In its Comments, the Maine PUC acknowledged AT&T’s concern about Verizon’s legal obligation to provide EELs in Maine but stated that it was satisfied with Verizon’s written letter and commitment that it would provide EELs. Maine PUC at 13-14. However, without a binding SGAT or wholesale tariff governing Verizon’s provision of EELs or UNEs in Maine, Verizon is free to change its EELs or UNE offerings at any time. Moreover, if Verizon is not subject to a clear legal obligation to provide EELs or UNEs, then disputes could arise in the future about the interpretation of its offerings and Verizon’s obligations with respect thereto. In either case, the only recourse available to a CLEC would be the filing of an administrative complaint with the Maine PUC or this Commission, which would be a time consuming and commercially unattractive option. The existence of a clear legal obligation to offer EELs and all forms of UNEs would help avoid or shortcut such disputes by making clear Verizon’s obligations. In a situation where Verizon is both a supplier to, and competitor of, CLECs, this clear legal obligation is necessary to prevent Verizon from taking actions to injure commercially CLECs that must rely on Verizon as their wholesale supplier.

⁴ *Pennsylvania 271 Order*, Appendix C (“Statutory Requirements”), ¶¶ 5, 37; *Massachusetts 271 Order* ¶ 11; *Connecticut 271 Order*, Appendix D, ¶¶ 5, 38; *KS/OK 271 Order* ¶ 28.

III. Competition In Maine Will Not Develop Without Changes To Verizon's Switching And DUF Rates.

The Maine PUC and DOJ cite the new UNE rates as evidence that the Maine local exchange markets are open to competition. The stark reality, however, is that those new UNE rates include clear TELRIC errors that significantly inflate Verizon's Maine UNE rates and constitute formidable barriers to entry. Before competition can develop in Maine, Verizon's inflated minute-of-use switching rates must be reduced to reflect proper cost causation principles required by TELRIC. With respect to Verizon's DUF rate, its "zero" rate is apparently only temporary, and Verizon's proposed Maine DUF rate which is based on its current Massachusetts DUF filings would clearly violate TELRIC principles and requires rejection of this Section 271 application.

A. Verizon's Switching Rates Violate TELRIC Principles.

Verizon's switching rates remain a significant barrier to entry in Maine. As demonstrated in AT&T's initial comments, Maine's switching rates should be based on Maine-specific switching cost information and allocated based on the cost causation principles. Applying these principles, 41 percent of the switching costs (rather than 70 percent) should be allocated to the minute-of-use charge, which would mean a reduction of the minute-of-use charge by approximately half. AT&T at 12.

While the Maine PUC's March 8, 2002 Order lowered the UNE switching rates, it did not address AT&T's concerns about switching rate design presented during the UNE rate proceeding. AT&T's initial brief filed with the Maine PUC in the UNE rate proceeding (portions of which are appended to these Reply Comments as Attachment 1) argued that "getting started" costs should be allocated to the fixed port rate element. However, the Maine PUC's

March 8, 2002 Order instead adopted the default 30 percent fixed/70 percent usage sensitive ratio for switching costs set forth in the FCC's universal service fund synthesis model. Use of this default ratio is clear error that is inconsistent with TELRIC cost causation principles and fails to take into account Maine-specific costs that should serve as the basis for the switching cost allocation. Moreover, this ratio inflates the minute-of-use charges to CLECs and allows Verizon to over-recover its costs. AT&T at 7-14.

As AT&T described in its initial comments, the majority of digital switch costs are now driven by ports – not by usage – and should be recovered in the fixed port rate element. With the computing power available in modern switches, the primary limiting factor in today's digital switches is not processing capacity but rather the exhaustion of the number of ports. Indeed, much of a switch's total cost is associated with memory, processors, administrative and maintenance equipment and is incurred at the time a switch is placed in operation. These "getting started" costs do not vary with usage and accordingly should be assigned to the fixed port rate element. *Id.* at 10.

The switching rates adopted by the Maine PUC do not follow these principles and instead allocate the large majority of switching costs, including "getting started" costs, to the usage sensitive minute-of-use rate element. In adopting the 30 percent fixed/70 percent usage sensitive ratio, the Maine PUC did not examine Maine-specific costs but instead relied on the default provisions of the FCC's universal service fund synthesis model. Such an allocation is inconsistent with TELRIC cost principles because it does not reflect switch cost causation or Maine-specific switching costs. TELRIC requires appropriate allocation of costs to provide the proper economic signals to consumers and to ensure that the rates paid by CLECs are based on the costs incurred by the ILEC. *Id.* at 8-10.

The inclusion of a fixed cost in a usage sensitive element creates an inequitable cost structure for a CLEC offering UNE-P service. Under this structure, the CLEC's switching costs (and the ILEC revenues from the provision of UNE-Ps) increase with increased usage, while the underlying ILEC costs are largely fixed and therefore increase at a much lower rate. In addition, because the flat rates for residential service act as a cap on the amount that a CLEC can charge for UNE-P service, the inflated minute-of-use rate element deters CLECs from serving high-use residential customers whose usage levels lead to higher costs for CLECs. Verizon's inflated minute-of-use rates undercut the attractiveness of high-use customers by inappropriately raising the costs of CLECs using UNE-P service to serve them. As a result, by artificially reducing the attractiveness of the high-end customers due to their higher usage costs and the cap of flat residential rates, this cost structure creates a significant barrier to entry for CLECs seeking to serve residential customers with UNE-P. *Id.* at 11.

An additional problem, as described in AT&T's initial comments, is that the inflated minute-of-use rate allows Verizon to over-recover its costs. As usage increases, Verizon receives additional revenues even though it has not incurred corresponding costs associated with that usage. The significant growth in usage over the past several years has added to this over-recovery of costs. Moreover, as rates remain in effect for a number of years between ratemaking proceedings, increases in usage during the interim increase Verizon's over-recovery and further disadvantage CLECs. *Id.* at 11-12.

Given the clear error by the Maine PUC in using the 30 percent fixed/70 percent usage sensitive ratio for allocating switching costs, Verizon's switching rates do not satisfy Checklist Item 2.

B. Verizon's Non-TELRIC Compliant DUF Rates Also Fail to Satisfy Section 271.

Verizon has made clear that the "zero" DUF rate referenced in its Application (Verizon Br. at 46 n.45) is of only passing relevance here, since Verizon will shortly seek to impose the same non-TELRIC compliant DUF rate in Maine that it is now seeking in Massachusetts. In an *ex parte* filing made two days ago,⁵ Verizon acknowledges that it "plans to propose a state-specific DUF rate in Maine later this year." The anticompetitive nature of that proposed Maine DUF rate is made clear by Verizon's statement that the Maine rate would be "similar to the rate it has proposed in Massachusetts which is \$0.001624 for the combined Network Data Mover and Message recording elements." However, those proposed Massachusetts DUF rates can provide no basis for approval here. They plainly violate TELRIC requirements, as they exceed by more than 80% AT&T's proposed TELRIC-compliant DUF rates in Massachusetts, and exceed by 60% the DUF rates authorized by the New York Public Service Commission based on the same region-wide DUF costs.

The DOJ Evaluation relies on Verizon's statement in its application that the Maine PUC's failure to adopt a DUF rate "effectively set the DUF rate at zero unless and until the PUC modifies this rate." DOJ Eval. at 6 n.23. In DOJ's view, Verizon's statement "should assuage AT&T's concerns that the DUF rate in Verizon's model and existing interconnection agreements, which AT&T alleges violates TELRIC principles, is still effective." *Id.* However, as made clear by Verizon's May 1 Ex Parte letter, this "zero" DUF rate will be in existence for

⁵ Letter from Richard T. Ellis to Marlene H. Dortch (May 1, 2002) ("May 1 Ex Parte").

only a short time⁶ – that is, during the pendency of this Section 271 proceeding -- and then Verizon intends to seek a new DUF rate that is far in excess of TELRIC principles.

Verizon's proposed Massachusetts DUF rates are 82% higher than AT&T's proposed TELRIC-compliant DUF rates in Massachusetts of \$0.000890 per record and 60% higher than the DUF rates authorized by the New York Public Service Commission based on the same region-wide DUF costs.⁷ Moreover, as demonstrated in AT&T's brief to the Massachusetts Commission (the relevant portions of which are appended as Attachment 2 hereto), Verizon's proposed Massachusetts DUF rates are riddled with TELRIC violations that significantly overstate costs. This is because Verizon seeks to 1) double count DUF costs already recovered through common overhead and accounting cost factors; 2) overstate transmission costs by failing to take account of hardware and software cost savings (savings that Verizon has acknowledged in its March 18 ex parte letter); 3) rely on estimated 1997 computer processing costs previously rejected by the Massachusetts Commission; 4) ignore dramatic declines in processing costs; and 5) overstate Verizon staffing costs for personnel to assist CLECs. In light of these various TELRIC errors, Verizon's Massachusetts DUF proposal

⁶ On the first page of Verizon's May 1 Ex Parte, Verizon states that it is not charging for DUF pursuant to its interconnection agreements or its Model Interconnection Agreement. On the next page, however, Verizon admits that it is still billing CLEC customers for DUF and that it is only now changing its billing systems to reflect a "zero" rate following the Maine PUC's February 12 Order.⁶ As noted in Section II *supra*, there is nothing to prevent Verizon from changing the DUF rate or seeking to continue charging the \$0.004214 DUF rate that applies under those agreements.

⁷ As described by AT&T's initial comments, because DUF costs are the same region-wide, there should be little region-wide variation in DUF rates. Indeed, in a March 18, 2002 Verizon ex parte filing, Verizon admitted that its DUF rates are based on region-wide 1996 data from the various former BellAtlantic North region operations. Verizon further conceded that computer hardware and software costs have been declining and that the amount of time required to process CLEC requests for usage information is now shorter, resulting in lower costs. AT&T at 14-16.

provides no proper basis for a TELRIC-compliant Maine DUF rate and requires rejection of this Section 271 application.

To leave CLECs with the sole remedy of contesting Verizon's Maine DUF proposal after the conclusion of the Section 271 proceeding would allow Verizon to escape review of a significant issue that can materially affect the ability of CLECs to compete. Verizon plainly cannot rely on the "zero" DUF rate for purposes of its Section 271 application after announcing plans to impose a higher and clearly non-TELRIC compliant DUF rate.

CONCLUSION

For the reasons stated above and in AT&T's Initial Comments, AT&T respectfully submits that Verizon's Section 271 application for Maine should be denied.

Respectfully submitted,

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May 3, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2002, I caused true and correct copies of the forgoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: May 3, 2002
Washington, D.C.

/s/ Peter M. Andros

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Attachment 1

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Investigation of Total Element Long-Run Incremental
Cost (TELRIC) Studies and Pricing of Unbundled
Network Elements

Docket No. 97-505

**INITIAL BRIEF OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.
REGARDING PROPOSED RECURRING AND NON-RECURRING
CHARGES FOR UNBUNDLED NETWORK ELEMENTS,
OPERATIONS SUPPORT SYSTEMS ACCESS, AND COLLOCATION**

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The FCC has recently criticized the fill factors proposed by Verizon and adopted by the DTE in Massachusetts. In comparing the 40 percent fill factor to those used in other jurisdictions, the FCC “question[ed] whether the low fill factor used in Massachusetts is appropriate without a state-specific justification.”¹⁴¹ No state-specific justification has been provided in Maine. Given the paucity of Verizon’s evidence for its excessively low fill factors, the Commission should adopt at the very least the more reasonable fill factors approved by both the New York Public Service Commission and the Vermont Public Service Board, which were: for fiber feeder, 80 percent in New York and 75 percent in Vermont; for copper distribution plant, 50 percent in both states; and, for NIDs, 62.5 percent in Vermont.¹⁴²

E. VERIZON HAS NOT PROVEN THAT ITS SWITCHING COST ASSUMPTIONS ARE REASONABLE.

1. Verizon developed switching prices per minute without accounting for growth in total minutes of use.

Verizon used the Switch Cost Information System (“SCIS”) – a proprietary model owned by Bellcore¹⁴³ – to “replicate the investment required ... to replace every switch in Maine,” which is then converted first into installed investment and then into monthly carrying charges.¹⁴⁴ In this exercise, Verizon used actual current line usage and demand data from current Maine switches, and made no effort to construct a forward-looking model of switch usage.¹⁴⁵ In other

¹⁴¹ *Verizon 271 Order* at ¶ 32.

¹⁴² Ex. ATT-24, Globerson Direct 9/15/97 at 17 (citing NY PSC order); Vermont Public Service Board, Docket 5713, Phase II Order of 2/4/2000, at 20-21, 99.

¹⁴³ Anglin, Tr. 1/22/98 at 51.

¹⁴⁴ *Id.* at 52-53.

¹⁴⁵ *Id.* at 53.

words, Verizon took the existing switches that it currently has in place in Maine, and asked SCIS (in effect) to calculate a current cost for those switches, based on certain assumptions.¹⁴⁶ There is nothing forward-looking about this exercise, because Verizon presented no evidence that this embedded data fairly represents expected switch usage over the life of the TELRIC network being modeled here.

This means that Verizon has overstated the switch usage charge, set forth on a per minute of use basis, even if it had met its burden of proving that all other aspects of its switch cost study were reasonable. Verizon intends to recover the TELRIC costs of switch investment by assessing a fee for each minute that a CLEC uses a switch to route one call.¹⁴⁷ It calculated a per minutes of use fee by spreading the total switch investment, both fixed and variable, across the *current* usage of its existing switches.¹⁴⁸ As the minutes of use continue to increase over the years that these switches will be in place, the fixed cost of the switch will not change, but the revenues collected by Verizon through this charge will continue to grow. That does not comport with the TELRIC methodology, under which per unit costs are to be calculated using a reasonable projection of future demand, not based on current demand levels.¹⁴⁹ What Verizon should have done is assign these fixed getting-started fees to non-traffic sensitive port rate elements, not the traffic sensitive minutes of use element.

¹⁴⁶ *Id.*

¹⁴⁷ See Ex. BA-14, Baker Revised Direct 7/15/98, Exhibit Part B.

¹⁴⁸ Ex. BA-14, Baker Revised Direct 7/15/98 at 13. See also Ex. BA-17, Workpaper Part B, pp. 8-10 (lines 1-2) & 77-78 (dividing switch investment by historic busy hour minutes of use to derive cost per minutes of use).

¹⁴⁹ See 47 C.F.R. § 51.511; FCC's Local Competition Order at ¶ 682.

Attachment 2

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts

D.T.E. 01-20

Part A (UNE Rates)

AT&T'S INITIAL POST-HEARING BRIEF

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trends, given the changes associated with the increase in cell phone usage and internet usage.⁴⁹⁹

“This factor was not documented and its impact on the minute of use cost is significant.”⁵⁰⁰

If the ratio of the busy hour calls to total day calls dropped 20 percent from 1997 to today, *i.e.* the BH/AHD ratio had declined to 6.6%, the busy hour to annual conversion factor would drop 20 percent to .000265 and ultimately cause the minute of use costs to decline by 20 percent.⁵⁰¹ No recent study has been conducted by Verizon to establish that its proposed 8.3% busy hour to total day based on 1997 data accurately reflects traffic today. However, the evidence indicates that busy hour to total day is likely to decline.⁵⁰²

In the 1996 Consolidated Arbitrations, Verizon used a 10% figure based on 1995 data, while it uses in this proceeding an 8.3% figure based on 1997 data.⁵⁰³ Given this trend, and the very good reasons to expect that it has been continuing and will continue into the future, the Department should adopt Ms. Pitts’ suggestion of a BH/AHD ratio approximately equal to 7.0%. This adjusted figure properly reflects the increased flattening of the busy hour.⁵⁰⁴

D. DUF Charges: Verizon Should Not be Allowed to Assess Extra Charges for Providing Billing Information in Daily Usage Files.

In addition to the switching rates proposed in Part C of Verizon’s recurring cost workpapers, Verizon also seeks in Part F-3 to impose a substantial charge for each billing record reported to a CLEC that purchases unbundled switching. This crucial billing information is sent to CLECs in the Daily Usage File (“DUF”). CLECs that purchase unbundled switching from Verizon, typically as part of a UNE-P arrangement, need to get from Verizon the key billing information associated with each call originated by the CLEC customer, such as the length and destination of call. Without accurate and timely billing information from Verizon, CLECs

⁴⁹⁹ Ex. ATT-21, Pitts Surrebuttal, at 7.

⁵⁰⁰ Ex. ATT-21, Pitts Surrebuttal, at 6.

⁵⁰¹ Ex. ATT-21, Pitts Surrebuttal, at 8.

⁵⁰² Tr. 2047, 1/29/02 (Pitts).

relying on unbundled switching are unable to prevent and resolve consumer billing problems, and unable to collect proper amounts from their retail customers.⁵⁰⁵

“In the Phase 4-O Order in the Consolidated Arbitrations [docket], the Department rejected Verizon MA’s DUF costs.”⁵⁰⁶ As a result, today there is no charge to CLECs for receiving the billing information that is gathered by Verizon’s switches. In this proceeding, Verizon once again has not met its burden of proving that its claimed DUF costs are TELRIC-complaint, or indeed of proving that they are accurate or make any sense. The Department should therefore, once again, reject Verizon’s proposed DUF charges in their entirety.

1. The Proposed DUF Charge Double Counts Costs Already Recovered Through Verizon’s Common Overhead and Other Support ACFs.

The Department previously found that Verizon may not assess a separate charge for providing billing records where the relevant computer-related costs are already accounted for in the joint and common overhead factors used by Verizon to develop all of its UNE rates.⁵⁰⁷ The Call Usage Detail Service (“CUDS”) charges that the Department rejected in the *Consolidated Arbitrations* proceeding are for the same billing record provision that is covered by what Verizon now calls its DUF charge.⁵⁰⁸

Verizon asserts that it has eliminated any possibility of double counting by its proposed DUF charges and its overhead factors “through an explicit adjustment to the ACFs.”⁵⁰⁹ But a quick review of the evidence shows that this assertion is not true. The “explicit adjustment” to which Verizon refers was made only to the Other Support ACF, and it took into account only the

(..continued)

⁵⁰³ Tr. 2334, 1/31/02 (Anglin).

⁵⁰⁴ Tr. 2059, 1/29/02 (Pitts).

⁵⁰⁵ Ex. VZ-37, Verizon’s Recurring Cost Study, Part F-3, Section 1.1 (DUF records are needed by CLECs “for timely and accurate billing of services to the end user”).

⁵⁰⁶ Ex. VZ-36, Verizon’s Recurring Cost Panel Direct Testimony, at 188.

⁵⁰⁷ *Consolidated Arbitrations* Docket, Phase 4-O Order at 9 (Jan. 10, 2000), citing Phase 4-L Order at 47-49 (Oct. 14, 1999).

⁵⁰⁸ Ex. VZ-36, Recurring Cost Panel Direct, at 188 fn. 40.

OSS access costs addressed in Mr. Minion's direct testimony without making any reduction in this ACF for the separate costs claimed in Verizon's Workpapers Part F-3 for providing billing records through DUFs.⁵¹⁰ No downward adjustment was made to any ACF to prevent double counting of the claimed DUF-related costs.

If Verizon's proposed OSS access charges and its proposed DUF charges both cover the same costs, then Verizon is brazenly attempting to pad its UNE charges by counting the same item more than once in its direct rate elements. But if, as Verizon claims, the OSS and DUF charges are for different alleged underlying costs, then making an adjustment to the Other Support ACF with respect to the OSS access costs in no way corrects for double counting between that Other Support ACF and the proposed DUF charge.

Furthermore, no adjustment whatsoever was made to prevent double counting within the Common Overhead ACF. This common overhead factor is applied by Verizon to gross up all of its claimed recurring costs.⁵¹¹ The Common Overhead ACF is the place in Verizon's cost study where it recovers for, among other things, computer hardware costs and the costs of information management personnel.⁵¹² The large and broad categories of costs covered by the Common Overhead ACF subsume the smaller, narrower costs that Verizon seeks to recover in its proposed DUF charges. The DUF charges are based on total investment in general purpose computers, on the cost of computing capacity, and on the cost of a few support personnel.⁵¹³

(..continued)

⁵⁰⁹ Ex. VZ-36, Recurring Cost Panel Direct, at 188.

⁵¹⁰ Ex. VZ-37, Verizon Recurring Cost Study, Part G-6, Tab 8 ("OSS Adjustment"); Ex. VZ-36, Recurring Cost Panel Direct, at 51 (Verizon subtracts from the Other Support ACF "an estimation of costs that are associated with access to OSS," which costs "are further discussed in Mr. Minion's testimony.").

⁵¹¹ See, e.g., Ex. VZ-37, Verizon Recurring Cost Study, Part B-1, Massachusetts Monthly Loop Cost Summary, lines 4, 11, 18, 25, 32 (loop rates); Part C-1, Section 1, Page 1, Line 20 (analog line port rate); Part C-2, Section 1, Page 1, Line 21 (local switch usage rate).

⁵¹² Ex. VZ-37, Verizon Recurring Cost Study, Part G-2, Tab 2.

⁵¹³ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Sections 4.1B-4.1D, and 4.3A.

As the Department found in its Phase 4-L and 4-O Orders, Verizon should not be able to assess specific charges for computing and related support costs that fall within categories of common costs which are recovered through general factors applied in calculating all UNE rates.⁵¹⁴ For this same reason, the proposed DUF charges should be rejected in this proceeding just as they were in the *Consolidated Arbitrations* docket.

2. Even If Verizon Had Not Double Counted Them, Its Proposed DUF Charges Should Still be Eliminated or Greatly Reduced.

Verizon provided little discussion and no substantive explanation of its proposed DUF charges in the scant two pages of prefiled testimony addressing the topic,⁵¹⁵ and instead relies upon the poorly documented workpapers in Part F-3. Verizon has proposed that CLECs be charged a total of \$0.001624 for each DUF billing record that is sent to the CLEC. This is the total of the \$0.001363 cost to process each record, plus the \$0.000261 to transmit each record to the CLEC electronically via an EDI interface, that is claimed by Verizon.⁵¹⁶

Although these numbers seem small on their face, in practice they can be important. At the typical customer MOU volumes that FCC staff uses to evaluate the actual cost impact of particular UNE rates, Verizon's proposed combined per DUF record charge would result in a cost of over 60 cents per month per UNE-P customer. That is a material and significant amount.

a. Verizon's Proposed Record Transmission Costs are Unreasonable.

Verizon has not come close to meeting its burden of proof with respect to the proposed per record transmission charge of \$0.000261. First, Verizon substantially overstated its claimed cost of computer processing, by basing its calculations on 1997 hardware costs. As explained in the next section, correcting for this one error would reduce the per record transmission charge to

⁵¹⁴ *Consolidated Arbitrations* Docket, Phase 4-O Order at 9 (Jan. 10, 2000), Phase 4-L Order at 47-49 (Oct. 14, 1999).

⁵¹⁵ See Ex. VZ-36, Recurring Cost Panel Direct, at 187-189.

\$0.00008. Second, Verizon rounds out its transmission charge cost study by applying arbitrary and unsupported assumptions regarding the number of “maintenance hours” and “daily CPU minutes” to be spent each day in transmitting DUFs. Since the cost study is unsupported, this charge should be disallowed in its entirety.

(1) Verizon overstates its data transmission costs by using 1997 costs of computer processing capacity.

One of the key inputs for Verizon’s claimed DUF transmission cost is the assumption that computer cost per minute of central processing unit (“CPU”) time equals \$13.13.⁵¹⁷ Verizon provides absolutely no backup or explanation for this number. It just appears, and we are told that it comes from “Integration and Planning.”⁵¹⁸

But this is not the first time that Verizon has trotted out this assumed processing cost of \$13.13 per CPU minute in support of claimed DUF charges. Verizon used the identical assumption in its 1997 cost study, which the Department rejected in its Phase 4-O order.⁵¹⁹ Thus, at least in this key respect, Verizon’s assertion that “[i]n this filing, the DUF study is based on more current data than that provided in the Consolidated Arbitrations”⁵²⁰ is patently false. This input was not justified in the 1997 cost study either. The only source for the \$13.13 figure was that it was “estimated.”⁵²¹ But the 1997 workpapers suggest that this figure was somehow derived from Verizon’s calculation that its cost of computer processing capacity was \$20,000 per Millions of Instructions Per Second (“MIPS”) in 1997.⁵²²

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⁵¹⁶ RR ATT-2, p.4; Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, p.9, § 2.1.

⁵¹⁷ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Section 4.3A, Line 9.

⁵¹⁸ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Section 5.7A

⁵¹⁹ *Consolidated Arbitrations* Docket, Phase 4-O Order, at 8 (Jan. 10, 2000), citing *Consolidated Arbitrations* Ex. BA-OSS-3, Attachment C.

⁵²⁰ Ex. VZ-36, Recurring Cost Panel Direct, at 188.

⁵²¹ *Consolidated Arbitrations* Ex. BA-OSS-3, Attachment C, Workpaper I, Line 4, column C.

⁵²² *Consolidated Arbitrations* Ex. BA-OSS-3, Attachment C, Workpaper I.

If the Department intends to adopt UNE rates in this proceeding that will remain in effect for five years, then it should set those rates based on the computing costs one would expect in the middle of that period, *i.e.* in 2004. In its Phase 4-O order, the Department concluded that any attempt by Verizon to recover for DUF costs or other OSS costs must be rejected for failure by Verizon to meet “its burden of proving that the components of that cost estimate were accurate” so long as Verizon’s cost estimates fail to “reflect the decrease in computational costs that are expected under ‘Moore’s Law,’ a widely accepted principle in the digital electronics industry, which holds that the cost of digital technology decreases by 50 percent every 18 to 24 months.”⁵²³ In testimony before Congress, Verizon Wireless has noted that there is every reason to expect this trend to continue: “Moore’s observation, now known as Moore’s Law, described a trend that has continued and is still remarkably accurate. It is the basis for many planners’ performance forecasts.”⁵²⁴ FCC Chairman Michael K. Powell agrees.⁵²⁵ Verizon has made no effort to refute Moore’s Law in this proceeding. To the contrary, its own records show that Verizon’s cost for processing capacity in MIPS decreased by 60% from 1996 to 1999, and its cost for storage capacity (measured in gigabytes of memory) decreased by 80% over the same three years.⁵²⁶

The Department’s prior findings provide guidance regarding how much Verizon has overstated its presumed DUF transmission costs by using a 1997 cost of \$13.13 per CPU minute,

⁵²³ *Consolidated Arbitrations Docket*, Phase 4-O Order at 8-9 (Jan. 10, 2000).

⁵²⁴ Statement of Molly Feldman, Vice President - Tax, Verizon Wireless, Testimony Before the Subcommittee on Oversight of the House Committee on Ways and Means, September 26, 2000. Available at < <http://waysandmeans.house.gov/oversite/106cong/9-26-00/9-26feld.htm> >. Accord Vermont Telecommunications Plan, Department of Public Service, August 2000 (“Moore’s observation, now known as Moore’s Law, described a trend that has continued and is still remarkably accurate.”) Available at < <http://www.state.vt.us/psd/tel00/tel00c12.htm> >.

⁵²⁵ Address by Chairman Michael K. Powell to British American, Inc., May 24, 2001 (“we unleashed this thing that we now are pretty familiar with that we call Moore’s law to describe this unbelievably relentless doubling and tripling of processing power”), available at < <http://www.fcc.gov/Speeches/Powell/2001/spmcp107.html> >. *See also, e.g.*, Keynote Address by Chairman Michael K. Powell, Georgetown Law Center First Year Orientation, August 30, 2000, (“Following Moore’s Law, the speed of the microchip doubles every 18 months.”), available at < <http://www.fcc.gov/Speeches/Powell/2000/spmcp001.html> >.

rather than adjusting this cost forward to expected 2004 levels. Verizon concedes that its cost per MIPS had fallen from \$20,000 in 1997 to \$9,800 by calendar year 2000.⁵²⁷ Applying Moore's Law, one would expect that Verizon's cost per MIPS will have fallen by at least 50% from 2000 to 2002, and another 50% from 2002 to 2004. In other words, one would expect that cost to fall by 75% over the four years from 2000 to 2004 ($1 * .50 * .50 = .25$). If Verizon's cost per MIPS in 2000 was \$9,800, then one would expect it to fall to \$2,450 by 2004. In other words, Verizon's computing costs will have decreased by almost 90 percent from 1997 to 2004 ($\$2,450 \div \$20,000 = 12.25$ percent, *i.e.* an 87.75% decrease).

It is a simple matter to apply this adjustment to Verizon's DUF cost study. In the electronic workpapers, one goes to Part F-3, Tab 4.3A, and replaces the assumed cost per CPU minute of \$13.13 with a new, circa 2004 cost of \$1.61 ($\$13.13 * .1225 = \1.61). The effect of updating this one input is to reduce the resulting data transmission charge per record calculated by Verizon's model to \$0.00008 per record, down from the \$0.000261 improperly calculated by Verizon.

As Verizon concedes, in the Phase 4-O order the Department found that the assumed investments underlying the DUF charges proposed in the *Consolidated Arbitrations* proceeding "were overstated."⁵²⁸ The passage of time, in the context of steadily declining computing costs, means that repetition of the exact same cost assumptions today results in even greater overstatement of costs than was true in the prior UNE rates case.

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⁵²⁶ Ex. VZ-26, Minion Direct, at 6.

⁵²⁷ Tr. 929, 1/18/02 (Minion).

⁵²⁸ Ex. VZ-36, Recurring Cost Panel Direct, at 189.

(2) Verizon provides no support whatsoever for its assumptions regarding the required extent of CPU processing time or number of “maintenance” hours.

Two other key assumptions in Verizon’s data transmission cost study are completely arbitrary. Verizon assumes that someone must spend two hours every day on “maintenance” related to DUF transmission, and that it will take 35 minutes of CPU processing time each day to transmit the DUFs.⁵²⁹ No explanation or justification is provided for these key inputs. Verizon says only that they “were taken from the previous study.”⁵³⁰ But the previous, 1997 OSS study said only that these two numbers were “Estimated;” no other backup was provided.⁵³¹

Verizon has not met its burden of proof with respect to its claimed DUF transmission costs, and that charge should be disallowed as it was in the *Consolidated Arbitrations* case.

b. Verizon’s Proposed Record Processing Costs are Unreasonable.

As discussed in Section III.D.1 beginning at page 98, the computer hardware and support personnel costs that underlie the proposed DUF record processing charge are already recovered through Verizon’s Common Overhead and Other Support ACFs, and thus no additional, separate DUF charge should be permitted. Even if there had been no double counting, however, Verizon has substantially overstated the “CLEC Support” costs that represent the vast majority of the proposed record processing charge. These support costs are for the individual service analysts who perform “usage error correction and adjustments” on billing records for CLEC customers.⁵³² Verizon substantially overstates these costs in at least two ways.

First, Verizon’s own cost study shows that it misstates staffing levels for 2001. Verizon calculates the annual cost for 2001, 2002, and 2003, and then derives the “annualized levelized

⁵²⁹ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Section 4.3A, lines 2 and 10.

⁵³⁰ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Section 5.8.

⁵³¹ *Consolidated Arbitrations* Ex. BA-OSS-3, Attachment C, Exhibit II.

⁵³² Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Section 5.5C.

labor costs” for this function. But though Verizon acknowledges that for 2002 and 2003 this function can be performed by only three service analysts, it calculates its 2001 costs assuming four analysts.⁵³³ If the forward-looking staffing level is three service analysts, that is the level that should be reflected in all years of a proper TELRIC study.

Second, Verizon substantially overstates the labor rate for this function. Verizon starts with direct labor rate for each position covered by its DUF cost study, and adds loadings for clerical support, management supervisory personnel, paid absence, premium time, and other associated costs.⁵³⁴ One of the categories of loadings is the catch-all “Other.” For the other three job categories covered by the DUF cost study, the “other” loading amounts to 3.2%, 6.5%, or 6.8% of the direct labor rate.⁵³⁵ This averages to 5.5%. But for the Service Analyst position (coded as JFC 1250), the “other” loading is a whopping and literally incredible 188.7% of the direct labor rate. The direct labor rate is \$24.21 per hour, and the loading for “other” is an additional \$45.70 per hour.⁵³⁶ If one goes to Tab 5.3A of Part F-3 of Verizon’s electronic workpapers and substitutes an “other” loading that is 5.5% of the direct labor rate, the total directly assigned labor rate for the Service Analysts drops from an unbelievable \$100.42 per hour down to \$56.05 per hour, which is more in line with the other labor rates assumed by Verizon in this DUF cost study.

If the Department permits any DUF charge for record processing, it should require that both of these corrections be made: the labor rate for Service Analysts in Tab 5.3A should be reduced as described, and the number of analysts presumed for 2001 in Tab 4.1D should be reduced from four to three. The impact of making these two changes is to reduce the total DUF

⁵³³ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Section 4.1D, line 6.

⁵³⁴ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Sections 5.3A to 5.3D; *see also Consolidated Arbitrations* Phase 4-L Order at 7, for discussion of use of such loadings to develop “directly assigned labor rates.”

⁵³⁵ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Sections 5.3B to 5.3D.

⁵³⁶ Ex. VZ-37, Verizon Recurring Cost Study, Part F-3, Sections 5.3A.

record processing charge from the \$0.001363 per record proposed by Verizon, to a more reasonable rate of \$0.00081.⁵³⁷

E. Reciprocal Compensation Rates for Terminating a Call Should Equal Unbundled Switching Rates for Doing the Same Thing.

Ironically but not surprisingly, after all of its improper efforts to inflate unbundled switching rates, Verizon turns around and improperly *understates* reciprocal compensation costs. Its motivation for doing this is clear: Verizon is a net payor of reciprocal compensation charges in Massachusetts, due to its loss of Internet Service Provider (“ISP”) customers to competitors, and thus it wishes to reduce those charges below TELRIC levels even as it tries to inflate other switching costs to excessively high levels.⁵³⁸

For its proposed reciprocal compensation rates, Verizon excludes “getting started” costs and RTU fees, even though it includes those costs in its switch UNE usage rates.⁵³⁹ Verizon concedes that there is no difference in how a switch processes UNE traffic and how it process reciprocal compensation traffic.⁵⁴⁰ After all, “reciprocal compensation’ traffic does not refer to a particular type of traffic, but rather to traffic subject to a particular compensation mechanism.”⁵⁴¹ Verizon nonetheless claims that it is entitled to charge different amounts for these calls. Although “the switch does not treat either type of terminating call differently,” “Verizon-MA has allocated the costs differently.”⁵⁴² Verizon is obviously trying to maximize its UNE revenues (thereby injuring its UNE competitors) and minimize the amounts it pays in reciprocal compensation.⁵⁴³ This is improper.

⁵³⁷ The intermediate step is that making these two changes has the effect of reducing the per record “CLEC Support” cost calculated at Tab 4.1D from \$0.00101 to \$0.00050.

⁵³⁸ See Verizon’s filings in Docket DTE 97-116.

⁵³⁹ Ex. VZ-36, Recurring Cost Panel Direct, at 162.

⁵⁴⁰ Ex. ATT-VZ 12-10; Ex. ATT-VZ 12-11.

⁵⁴¹ Ex. ATT-VZ 12-10.

⁵⁴² Ex. ATT-VZ 12-10.

⁵⁴³ Ex. ATT-20, Pitts Revised Rebuttal, at 43.